

143839 Perry



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Spence Brothers

**File:** B-243766

**Date:** May 2, 1991

E.A. Spence, Jr., for the protester.  
Anne B. Perry, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### **DIGEST**

Bidder's failure to submit solicitation's Certificate of Procurement Integrity renders its bid nonresponsive since completion of the certificate imposes material legal obligations upon the bidder to which it is not otherwise bound.

### **DECISION**

Spence Brothers protests the rejection of its bid as non-responsive under invitation for bids (IFB) No. 8907-AE, issued by the Department of Veterans Affairs (VA) for general construction and asbestos abatement in a nursing home care unit, at the VA Medical Center, Saginaw, Michigan. The VA rejected Spence's bid as nonresponsive because Spence failed to submit with its bid a completed Certificate of Procurement Integrity, as required by Federal Acquisition Regulation (FAR) § 52.203-9. Spence objects to the rejection, arguing that the agency should accept its post-bid opening submission of its completed certificate as a late modification of an otherwise successful bid that makes its terms more favorable to the government, in accordance with FAR § 14.304-1(d), or that the omission should be waived as a minor informality.

We dismiss the protest.

Since the facts of this case are essentially identical to those in LBM, Inc., B-243505, Apr. 12, 1991, 91-1 CPD ¶ \_\_\_, we resolve the protest without obtaining an agency report. See Bid Protest Regulations, 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.3(m)).

As explained in LBM, the Certificate of Procurement Integrity imposes additional legal requirements upon the bidder materially different from those to which the bidder is

otherwise bound, either by its offer or by law. In particular, the certification implements several provisions of the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423 (West Supp. 1990); the OFPP Act prohibits activities involving soliciting or discussing post-government employment, offering or accepting a gratuity, and soliciting or disclosing proprietary or source selection information.

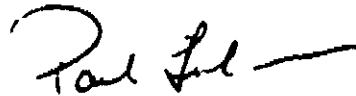
The procurement integrity certification requirements obligate a named individual--the officer or employee of the contractor responsible for the bid or offer--to become familiar with the prohibitions of the OFPP Act, and impose on the bidder, and its representative, a requirement to make full disclosure of any possible violations of the OFPP Act, and to certify to the veracity of that disclosure. In addition, the signer of the certificate is required to collect similar certifications from all other individuals involved in the preparation of bids or offers; in this regard, the certifying individual attests that every individual involved in preparation of the bid or offer is familiar with the requirements of the OFPP Act. The certification provisions also prescribe specific contract remedies--including withholding profits from payments and terminating errant contractors for default--not otherwise available. See Mid-East Contractors, Inc., B-242435, Mar. 29, 1991, 91-1 CPD ¶ \_\_\_\_.

As a result of the substantial legal obligations imposed by the certification, omission from a bid of a signed Certificate of Procurement Integrity leaves unresolved a bidder's agreement to comply with a material requirement of the IFB. For these reasons, failure to complete and return the certificate itself by the bid opening date is a material deficiency in a bid requiring that the bid to be rejected as nonresponsive. See also FAR § 14.404-2(m). The late modification rules do not allow a bidder to cure a nonresponsive bid after bid opening. See LTT Constructors, Inc., B-229062, Nov. 13, 1987, 87-2 CPD ¶ 484.

Here, as in LBM, Spence failed to submit a completed procurement integrity certification with its bid; accordingly, since Spence's bid does not represent on its face an unequivocal commitment to comply with the material obligations imposed by

the certification, and its failure cannot be cured by its untimely submission of the completed certification, we find that its bid was properly rejected as nonresponsive by the VA.

The protest is dismissed.

A handwritten signature in cursive script, appearing to read "Paul Lieberman", followed by a horizontal line.

Paul Lieberman  
Assistant General Counsel